
OVERVIEW

Indian Child Welfare Act (ICWA)/Michigan Indian Family Preservation Act (MIFPA) cases may be transferred to a tribal court upon request of either parent or tribe unless good cause not to transfer is determined by a court. The Michigan Department of Health and Human Services (MDHHS) has established and maintains procedures for the transfer of responsibility for the placement and care of a child under Michigan's Title IV-E plan to a Tribal Title IV-E agency or an Indian Tribe with a Title IV-E agreement.

Title IV-E federal regulations apply to Indian child welfare case transfers based upon jurisdiction and/or care and supervision of child designations.

GOOD CAUSE NOT TO TRANSFER TO TRIBAL AGENCY/COURT

Upon receipt of a transfer petition from an Indian child's parent, Indian custodian, or tribe, the state court must transfer the child-custody proceeding unless the court determines that transfer is not appropriate because one or more of the following criteria are met:

- Either parent objects to such transfer;
- The tribal court declines the transfer; or
- Good cause exists for denying the transfer,

Michigan law, MCL 712B.7(5), lists the following good cause reasons:

- The Indian tribe does not have a tribal court.
- The requirement of the parties or witnesses to present evidence in tribal court would cause undue hardship to those parties or witnesses that the tribal court is unable to mitigate.

If the state court believes, or any party asserts, that good cause to deny transfer exists, the reasons must be stated on the record or provided in writing and to the parties to the child-custody proceeding. Any party to the child-custody proceeding must have the opportunity to provide the court with views regarding whether good cause to deny the transfer exists.

In determining whether good cause exists, the court may not consider:

1. Whether the foster care or termination of parental rights proceeding is at an advanced stage if the Indian child's parent, Indian custodian, or tribe did not received notice of the child-custody proceeding until an advanced stage;
2. Whether there have been prior proceedings involving the child for which no petition to transfer was filed;
3. Whether transfer could affect the placement of the child;
4. The Indian child's cultural connections with the tribe or its reservation; or
5. Socioeconomic conditions or any negative perception of tribal or Bureau of Indian Affairs (BIA) social services or judicial systems.

TRANSFER TO
TRIBAL
AGENCY/COURT
PROTOCOL

In-State Tribal
Agency/Court
Transfer with State
Tribal Title IV-E
Agreement

Prior to case transfer, caseworkers and supervisors must review the case plan, medical assistance and funding source to include any funds MDHHS is holding on behalf of the child (Social Security Income, Child Support, IV-D, trust, etc.) for each Indian child welfare case including children's protective services, foster care, adoption, juvenile justice, and juvenile guardianship with the tribal agency/court and/or tribal social service department in the respective tribe of case transfer to ensure continuity of services.

If MDHHS is not maintaining care & supervision for the transferred case, after completing transfer to tribal agency protocol utilizing the DHS-120B Transfer to Tribal Agency/Court form, the caseworker must close the case in MiSACWIS.

Case Conference or
Family Team
Meeting (FTM)

Case workers must conduct a case conference or FTM to determine where the child will be placed, who is assuming care and supervision, and to relieve the PAFC that is overseeing the youth of their responsibility including but not limited to signing an agreement with the tribe determining funding and date of enactment; see NAA 205 Case Management.

Utilize a DHS 120-B, Transfer to Tribal Agency/Court, form to assist with review and transfer. A DHS 120-B, Transfer to Tribal Agency/Court form, must be completed and scanned into the Michigan State Automated Child Welfare Information System (MiSACWIS) case file in the Personal ICWA history Add ICWA details and placement sections. Upon request from the tribe, caseworkers will forward all required documentation to the tribe.

In-State Tribal
Agency/Court
Transfer with a
Direct Title IV-E
Agreement
(Federal)

Caseworkers must implement all Transfer to Tribal Agency/Court Protocol as stated above and:

- MDHHS will establish eligibility for Title IV-E at the time of transfer, if an eligibility determination is not already completed and provide all Title IV-E funding determinations to the tribe. A DHS 352, Initial Funding Determination packet, supporting documents, Bridges screen shots must be sent to the tribe to support a Title IV-E funding determination. The transfer does not affect a child's eligibility (if order/placement meet IV-E eligibility requirements), receipt of services, or payment under Title IV-E or the medical assistance program operated under Title XIX.
- Caseworkers must provide the tribe a copy of placement history and provider license.
- If MDHHS is not maintaining care & supervision for the transferred case, the caseworker must close the case in MiSACWIS. Caseworkers must complete and utilize the DHS-

120B Transfer to Tribal Agency/Court prior to case closure in MiSACWIS.

OUT-OF-STATE
TRIBAL
AGENCY/COURT
TRANSFER

Tribal Jurisdiction, Care and Supervision of Child

Michigan negotiates with any federally-recognized American Indian tribe, tribal organization or tribal consortium that requests to develop an agreement with MDHHS to administer all or part of the Title IV-E program on behalf of American Indian children who are under the authority of the tribe, organization, or consortium. This includes Title IV-E foster care maintenance payments on behalf of children who are placed in MDHHS or tribally licensed foster family homes, adoption assistance payments, and guardianship payments and tribal access to resources for administration, training, and data collection under Title IV-E.

For out of state cases which are considered ***Tribal Court Jurisdiction Only (Michigan MDHHS Care and Supervision), Tribal Court Jurisdiction Only (Other State/PAFC Care and Supervision), or Out-of-State Tribal Agency/Court Transfer with a Direct Title IV-E Agreement (Federal)***, caseworkers must implement all Transfer to Tribal Agency/Court Protocol, establish eligibility for Title IV-E, and provide the tribe a copy of placement history and provider license.

MDHHS foster care and Title IV-E funding from the state of Michigan will be closed/stopped upon acceptance from the receiving Title IV-E tribal agency or court in order for the tribe and state to claim the Title IV-E expenditures according to federal regulations.

Caseworkers must:

- Conduct a case conference or FTM regarding transfer to tribal agency/court and utilize the DHS-120B prior to closing case in MiSACWIS.
- Close the case in MiSACWIS after completing the case transfer to the tribe.

If Michigan MDHHS is providing care and supervision of the child, Michigan MDHHS will fund the cases according to state and federal law.

CONTINUITY OF SERVICES

Utilize the DHS-120B to assist in transferring a case to a tribe and maintaining a continuity of services and funding for the Indian child.

INTERSTATE COMPACT (ICPC)

Case transfers to and from other states and/or tribes with Title IV-E programs may be facilitated through ICPC and negotiated prior to case transfer.

LEGAL BASIS

Bureau of Indian Affairs (BIA) ICWA Final Rule, 25 CFR 23.

Fostering Connections to Success and Increasing Adoptions Act, P.L. 110-351.

Indian Child Welfare Act, 25 USC 1901 et seq.

Michigan Indian Family Preservation Act, MCL 712B. 1 - 41.

MCR 3.905 Indian Children; Jurisdiction, Notice, Transfer, Intervention.